



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 34286595

Date: OCT. 16, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. Specifically, the Director denied the petition because the Petitioner did not identify what regulatory criteria she met or how any of her evidence should be applied to those requirements. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten following criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x):

(i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;

(iv) Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;

(v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

(vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Where a petitioner meets these initial evidence requirements, we then move to the second step to consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step review where the documentation is first counted and then,

if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

## II. ANALYSIS

The Petitioner failed to specifically identify the criteria in the regulation at 8 C.F.R. § 204.5(h)(3) under which she wished USCIS to consider each form of evidence. If it is the Petitioner's contention that she meets a particular criterion, it remains her responsibility to specifically identify under which criterion USCIS should consider the evidence. She did not provide such a statement or argument in the initial filing, in her response to the Director's request for evidence, nor now on appeal. The burden is on the Petitioner to establish eligibility. It is not USCIS's responsibility to infer or second-guess the intended criteria. Had USCIS attempted to apply the evidence in a manner the Petitioner did not intend, and subsequently found her ineligible, that would serve as one possible basis for an appeal.

We offer additional information the Petitioner can apply to a future petition if she decides to refile seeking this same immigrant classification. This classification first requires a foreign national to explain which of the regulatory criteria they claim to meet listed above in Section I (8 C.F.R. § 204.5(h)(3)(i)–(x)). In addition to that explanation, the filing party must inform the Director of how they should relate each of the submitted documents to each of the criteria he or she attempts to satisfy. If this process remains unclear to the Petitioner, she may wish to visit the USCIS website that offers some basic information about filing for this immigrant petition. For instance, the two following websites offer some additional insight:

- *Checklist of Required Initial Evidence for Form I-140 (for informational purposes only)*, U.S. Citizenship and Immigration Services (Aug. 19, 2024), <https://www.uscis.gov/forms/filing-guidance/checklist-of-required-initial-evidence-for-form-i-140-for-informational-purposes-only>.
- Under the Submitting Evidence section, *Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Workers*, U.S. Citizenship and Immigration Services (July 9, 2024), <https://www.uscis.gov/forms/all-forms/petition-filing-and-processing-procedures-for-form-i-140-immigrant-petition-for-alien-workers>.

As a result, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.